

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE
BANGALORE BENCH.

Dated: the 4th day of March, 1988.

BEFORE

THE HON'BLE MEMBER(A) SHRI L.H.A. REGO

APPLICATION NO.1092 OF 1987(F)

R
R.G.Dabhade S/o G.B.Dabhade,
56 years,
Senior Section Supervisor,
Central Telegraph Office,
BELGAUM.

.. Applicant

(By Shri M.Raghavendra Achar, Advocate for the applicant)

-vs.-

The Director General,
Telecommunications,
Deptt. of Telecommunications,
New Delhi.

.. Respondent.

(By Shri M.Vasudev Rao, Addl.Standing Counsel
for Central Government for Respt.)

The application coming on for hearing before
this Tribunal, the Hon'ble Member(A) made the follow-
ing:

ORDER

This is an application filed under Section 19
of the Administrative Tribunals Act, 1985, wherein it
is prayed that the Order dated 7-9-1987(vide Annexure-C)
(which appears to be a mistyped in the application as
4-5-1987) passed by the respondent, namely, the Director
General of Telecommunications, New Delhi('DG' for short)

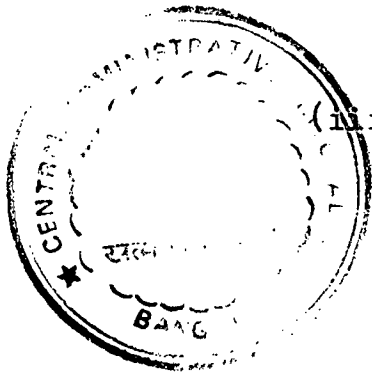
rejecting



rejecting the request of the applicant to step up his pay, with reference to his junior Shri A.V. Nyayadhish, be set aside, with a direction to the respondent to fix pay on par with Shri Nyayadhish and to grant him all consequential benefit.

2. The following synoptic table, furnishing the relevant service particulars of the applicant vis-a-vis Shri Nyayadhish in juxta position, places the case in focus, to help determine the questions raised in this application:

Sl. No.	Particulars	Shri Dabhade (applicant)		Shri Nyayadhish	
		Date	Pay p.m. (Rs.)	Date	Pay p.m. (Rs.)
1	2	3	4	5	6
(i)	Entry in the Tele-communication Deptt. as a Time Scale - Clerk(TSC)	27-8-1953	60/-	1-11-1953	60/-
(ii)	Pay in the Old scale of pay(OS) viz. Rs.110-4-115-5-175-6-295-7-240.	31-12-1972	199/-	31-12-1972	199/-
(iii)	Pay according to the recommendations of the IIIrd Central Pay Commission(III CPC) in the revised pay scale, viz. Rs.260-8-300-8-340-10-360-12-420-12-480.	1-1-1973	384/-	1-1-1973	384/-
(iv)	Next date of increment and pay in the RS. ..	27-8-1973	396/-	2-12-1973	396/-
(v)	Promotion as Lower Selection Grade - Clerk/LSG(C) in the pay scale of Rs.425-15-560-20-640.	4-1-1974	425/-	Promotion declined	



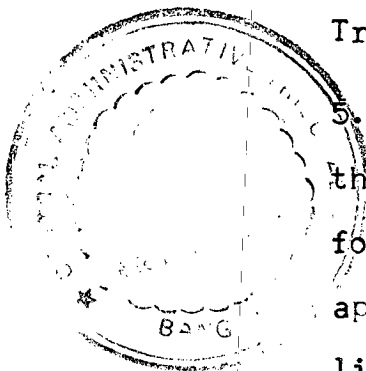
1	2	3	4	5	6
(vi) Pay as on:	2-12-1974	425/- [As LSG (C)]	2-12-1974	432/-*	(As TSC)
				*On option to fix pay according to III CPC recommendations w.e.f 2-12-1974.	
(vii) Pay as on:	4-1-1975	440/-	4-1-1975	432/-	
(viii) Pay as on 4-4-1975 when Shri Nyayadhish was promoted as LSG(C).	4-4-1975	440/-	4-4-1975	455/-	
(ix) Pay as on:	4-4-1981	530/-	4-4-1981	545/-	
(x) Promotion as Higher Selection Grade Clerk [HSG(C)] in the pay scale of Rs. 550-70-659- 25-750(RS)	31-10-1981	550/-	31-10-1981	570/-	
(xi) Pay as on:	31-10-1985	630/-	31-10-1985	650/-	
(xii) Pay as on 1-1-1986 when the date for next increment (DNI) was opted.	1-1-1986	630/-	1-1-1986	650/-	
(xiii) Pay as on 31-10-1986 when the New Scale of Pay according to IVth CPC recommendations was opted.	31-10-1986	650/-	31-10-1986	675/-	
(xiv) Pay fixed in the new scale of Pay as HSG(C) according to IVth CPC recommendations.	4-4-1986	1900/-	4-4-1986	2,000/-	



3. The grievance of the applicant is, that while his pay was fixed at Rs.550/- p.m. on 31-10-1981 on his promotion to the cadre of HSG(C), that of his junior Shri Nyayadhish was fixed higher, at Rs.570/- per mensem, despite the fact, the applicant was promoted as LSG(C) earlier, on 4-1-1974 and Shri Nyayadhish was promoted to this cadre on 4-4-1975, having declined promotion to this cadre earlier.

4. Aggrieved, the applicant had submitted a representation to the DG, on 9-8-1984 (Annexure 'A') and ^{he} is said to have remanded him thereon, on 21-3-1985, 24-6-1985 and 26-12-1985 and finally on 2-3-1987 (Annexure 'B') but it was turned down by him on 4-5-1987 (Annexure-C) without stating any reasons. The applicant further alleges, that this anomaly was aggravated when the recommendations of the IVth CPC were given effect to, while revising the pay of Shri Nyayadhish to Rs.2,000/- per mensem, as on 4-4-1986, while his revised pay was pegged lower at Rs.1,900/- per mensem, from that date. The applicant has therefore approached this Tribunal, for redress.

5. The respondent has filed his reply resisting this application. Shri M.Vasudev Rao, learned Counsel for the respondent, contended at the outset, that this application was highly belated and therefore barred by limitation and that further, this application which in effect sought to enforce a claim arising prior to 1-11-1982, was not maintainable under the Administrative Tribunals Act, 1985 as ruled by the Principal Bench of this Tribunal in A.T.R. 1986 (AT) 203 (V.K.MEHRA v. SECRETARY, MINISTRY OF INFORMATION & BROADCASTING,



GOVERNMENT OF INDIA, NEW DELHI). Refuting this contention, Shri M.R.Achar submitted, that as the cause of action for the applicant related to fixation of his pay, it was a grievance which recurred year after year if not earlier, in some cases, on account of some other factors, which were material to fixation of pay of his client, and therefore was of the nature of a "continuing cause" of action. This submission of Shri Achar, in my view, merits consideration and therefore I overrule the preliminary objection raised by Shri M.V.Rao on grounds of limitation and maintainability of the application.

6. Dealing with the merits of the application, Shri Achar contended, that it was anomalous that a person who declined promotion at a certain stage, should overtake in the matter of fixation of pay, one who had faithfully discharged his duty and accepted higher responsibility cheerfully, by way of promotion in the onward march of his career as in the case of his client; and that it is odd that tendentious attitude to decline promotion and thereby avoid onerous responsibility should be rewarded by higher pay, which in effect ^{he} said, was tantamount to disincentive and travesty of justice, apart from being violative of equality under Articles 14 and 16 of the Constitution.

7. Refuting the above contentions, Shri Rao submitted, that Shri Nyayadhish had ^{denied} the benefit of higher pay as compared to the applicant, ^{mainly} ~~namely~~, on

account



account of judicious option of the pay scale at the crucial stage as on 2-12-1974, in accordance with the recommendations of the IIIrd CPC and that the anomaly was not directly as a result of the application of the provisions of Fundamental Rule(FR) 22-C in the revised scale of pay. The applicant could not therefore, he said, claim parity with Shri Nyayadhish, in regard to fixation of his pay and consequential relief.

8. I have examined the rival contentions carefully, as also the relevant material placed before me, by both sides, ^{and} from the service details furnished in the synoptic table in para-2 supra, it would be seen, that for the first time on 2-12-1974, the pay of Shri Nyayadhish was fixed higher than that of the applicant at Rs.432/- p.m. in the lower post of TSC, as compared to Rs.425/- p.m. in respect of the applicant, though holding a higher post of LSG(C) on that date. This anomaly was not directly as a consequence of the application of the provisions of FR 22-C, but as a result of the fresh option exercised by Shri Nyayadhish, with effect from 2-12-1974 in the light of the instructions contained in Office Memorandum (OM) dated 17-5-1974 from the Union Ministry of Finance, Department of Expenditure, Implementation Cell, New Delhi, the relevant extract of which reads as follows:

"Sub: Central Civil Services(Revised Pay) Rules 1973. Fixation of pay of Govt. Servants who opt for the revised scale from a date subsequent to the 1st Jan.1973.

Attention



Attention is invited to Rule 9 of the Central Civil Services (Revised) Rules, 1973, under which the pay of a Govt. servant who opts for the revised scale of pay from a date later than 1-1-73 is fixed in that scale. It is represented that the non-application of the provisions of Rule 7 of those such cases has deprived the Govt. servants concerned of substantial benefits in fixation of their pay in the revised scales. This matter has been discussed in the Committee of the National Council (JCM) set up to consider anomalies out of the implementation of Government(s) decisions on the recommendations of the third pay commission, and on the basis of the agreement reached therein. President is pleased to decide that the pay of the Government servants who opt for the revised scales of pay from a date not later than 31st December 1974 also be fixed under the provisions of Rule 7 of the Rules *ibid* and further period of 3 months with effect from the date of issue of those order provided to enable the employees who want their pay to be fixed in the scale from a date not later than 31st Dec. 1974, to indicate their or to revise it in the case of those who have already exercised their options as regard to the date from which they want their pay to be fixed in the scales. However, the pay of employees who exercise their option for scales with effect from any date after 31-12-1974 shall be fixed in under Rule 9 of the Rules *ibid*."



9. The manner in which the pay of Shri Nyayadhish was fixed at Rs.432/- p.m. has been explained by the respondents in para 3 (page 3) of their reply to the

application,

NA

application,

/ and this seems to be correct though at first

blush, it may appear anomalous that Shri Nyayadhish who initially declined promotion to the post of LSG(C), should draw higher pay than the applicant, who is senior to him and that too, when the latter is promoted to the next higher post, namely that of LSG(C). At best, this could be attributed to a quirk in the pay fixation rules, the validity of which has not been challenged by the applicant, and to circumspection and ingenuity on the part of Shri Nyayadhish, in foregoing promotion to the post of LSG(C) at the crucial moment and in selecting the date for option of the scale of pay in the post of TSC in accordance with the recommendations of the III CPC. This ephemeral rise in pay of Shri Nyayadhish was however later offset on 4-1-1975 when the applicant earned an increment in the revised scale of pay of LSG (C). Thereafter, Shri Nyayadhish stole a march over the applicant from 4-4-1975 onwards, by drawing higher pay than the applicant by virtue of two successive promotions, one to the post of LSG (C) on 4-4-1975 and the other to the post of HSG(C) on 31-10-1981 and of the benefit of direct application of the provisions of FR 22-C.

10. The Union Ministry of Finance have in their O.M. dated 4-2-1966, laid down instructions as to the manner in which the anomaly of pay in respect

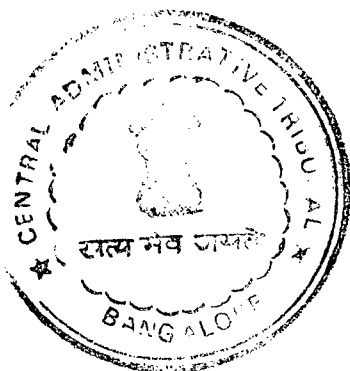
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of a senior drawing less pay than his junior on promotion as a result of application of FR 22-C should be rectified. This O.M. reads as follows:

"10.(a) As a result of application of F.R. 22-C.-- In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R. 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.




The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R. 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay."

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11. The present case falls within the ambit of these instructions, as conditions (a) to (c) stipulated therein, as a pre-requisite for correction of the anomaly, are duly fulfilled with effect from 4-4-1975 i.e. when Shri Nyayadhish was promoted to LSG(C) and was given the benefit of F.R. 22-C in the fixation of his pay, on account of this promotion and as a result drew higher pay than the applicant, -vide synoptic table in para-2 supra. This pay came to be further enhanced on account of a second promotion granted to Shri Nyayadhish on 31-10-1981, to the post of HSG(C) and this disparity continued onwards.

12. It is thus apparent, that the case of the applicant for stepping up his pay on par with Shri Nyayadhish, his senior, merits consideration with effect from 4-4-1975, in accordance with the instructions in the aforesaid O.M. dated 4-2-1966 of the Union Ministry of Finance.

13. The applicant claims arrears of salary on account of re-fixation of pay with effect from 2-12-1974 but has filed the present application belatedly on 17-12-1987 i.e., after nearly 13 years. Though I have held that this is a continuing grievance and have for the reasons stated in para 5 supra, overruled the preliminary objection of limitation and maintainability of the application raised by Shri Rao, the fact that the applicant has bestirred himself far too late, in preferring the claim



claim for arrears of salary cannot be overlooked. In the case of a claim for arrears of salary, the period of limitation would be that laid down in Article 102 of the Indian Limitation Act, 1908(vide 1961(1) S.C.R. 886 - MADHAV LAXMAN VAIKUNTHE v. THE STATE OF MYSORE). Accordingly, an employee can claim arrears of salary which fell within 3 years of the date of filing the suit/application.

14. In the result, I make the following order:

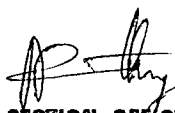
ORDER

- (i) The impugned Order dated 7-9-1987 (Annexure-C) of the Director General of Telecommunications, New Delhi, is hereby quashed.
- (ii) The respondent is directed to rectify the anomaly in the fixing of pay of the applicant with effect from 14-4-1975 and regulate his pay thereafter, in accordance with the instructions contained in the aforesaid O.M. dated 4-2-1966 of the Union Ministry of Finance.
- (iii) The applicant be granted arrears of salary as a consequence, in accordance with para-13 ^{de} supra.
- (iv) This order be complied ^{de} within a period of 3 months from the date of its receipt.
- (v) No order as to costs.



TRUE COPY

Sd/-
(L.H.A. REGD) 4-3-1988
MEMBER(A).


10/3/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE